

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SCOTT NOLAN SCOTT,

Plaintiff,

No. 2:15-cv-00319-AC

v.

ORDER

MARK NOOTH,

Respondent.

HERNÁNDEZ, District Judge:

Magistrate Judge Acosta issued a Findings & Recommendation [52] on October 10, 2017, in which he recommends that this Court deny the Petition for Writ of Habeas Corpus [2] filed by Petitioner Scott Nolan Scott and dismiss the case with prejudice. Judge Acosta also recommends that the Court certify that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Petitioner filed timely objections to the Magistrate Judge's Findings & Recommendation. Pet'r's Obj., ECF 54. When any party objects to any portion of the Magistrate Judge's Findings

& Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

The Court carefully considered Petitioner's objections and concludes there is no basis to modify the Findings & Recommendation. Even if Petitioner is correct that the Magistrate Judge failed to fully understand Petitioner's claim of ineffective assistance of counsel, the Magistrate Judge did not err in finding that "the PCR court was not unreasonable in finding trial counsel's assistance was not ineffective." F&R at 9. Not only were trial counsel's decisions reasonable, but Petitioner has not shown that, but for the alleged errors, there was a reasonable probability that the result of the proceeding would have been different. *See Id.* at 7–8. The Court also reviewed the pertinent portions of the record *de novo* and finds no other errors in the Magistrate Judge's Findings & Recommendation.

CONCLUSION

The Court ADOPTS Magistrate Judge Acosta's Findings and Recommendation [52] denying Petitioner's Writ of Habeas Corpus [2]. Because Petitioner has not made a substantial showing of the denial of a constitutional right, pursuant to 28 U.S.C. § 2253(c)(2), the Court declines to issue a Certificate of Appealability.

IT IS SO ORDERED.

DATED this 21 day of December, 2017.



MARCO A. HERNÁNDEZ
United States District Judge